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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/848,883	05/04/2001	Stacy Susan Hawkins	J6610(C)	8355

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UNILEVER  
PATENT DEPARTMENT  
45 RIVER ROAD  
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EXAMINER

ROSARIO-VASQUEZ, DENNIS

ART UNIT PAPER-NUMBER

2621

DATE MAILED: 02/27/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/848,883

Applicant(s)

HAWKINS ET AL.

Examiner

Dennis Rosario-Vasquez

Art Unit

2621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE Three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 May 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Priority***

1. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 119 (e) as follows:

An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification of in an application data sheet (37 CFR 1.78(a)(2) and (a)(5)). The specific reference to any prior nonprovisional application must include the relationship (i.e., continuation, divisional, or continuation-in-part) between the applications except when the reference is to a prior application of a CPA assigned the same application number.

### ***Claim Objections***

2. The following quotations of 37 CFR § 1.75(a) is the basis of objection:
  - (a) The specification must conclude with a claim particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention or discovery.
3. Claim 5 is objected to under 37 CFR § 1.75(a) as failing to particularly point out and distinctly claim the subject matter which the applicant regards as his invention or discovery.

Claim 5, line 11 has the word "displaced". However, in the specification at page 6, line 2 shows support for claim 5 using the word "displayed" instead of "displaced" as shown in claim 5, line 11.

Therefore the word "displaced" will be assumed to actually mean "displayed" for claim 5 for the rest of the office action.

Corrective action is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Hillebrand et al. (US Patent 6,571,003 B1).

Regarding claim 1 Hillebrand et al. discloses a method for demonstrating effectiveness of a cosmetic product on a consumer's body parts (Hillebrand et al. states," The method and apparatus provide quick identification of the skin defects in a user friendly manner thereby allowing an operator to recommend cosmetic products or medical treatments and simulate an improvement and/or worsening to the areas (col. 1, lines 45-50).") when applied over a period of time ("The person's age may be entered..." at col. 5, lines 50-54, or a person may return for a subsequent visit at col. 5, lines 47,48), the method comprising:

- (i) selecting a cosmetic product for trial on the consumer's body (A cosmetic product is cross referenced to a defect of the skin at Hillebrand et al.: col. 11, lines 59-64) and identifying a body feature ("located defect areas" at Hillebrand et al., from col. 11, lines 67 to col. 12, line 1 and fig. 8, num. 804) being observed over the time;
- (ii) capturing an image (Hillebrand et al., fig. 4, label: "ACQUIRE IMAGE") of the body part;

(iii) displaying the image on a monitor (fig. 1, numerals 108 and 114);

(iv) digitally transforming (An improved image is created from an original image using a morphing algorithm or a facial simulation at Hillebrand et al.: col. 12, lines 10-25) the selected body feature on the displayed image in conformance with a predicted effect of the cosmetic product ( Hillebrand et al. states," Simulating improvements may be useful when the operator is recommending a treatment using a product which eliminates and/or hides skin defects to show the analyzed person the potential benefits of the product(s) (col. 11, lines 53-57).") and displaying the digitally transformed image (Using figure 1, a computing device 106 is provided to simulate and display improvements on a display 108 at col. 11, lines 66,67);

(v) allowing the consumer to compare results of the transformed versus the displayed image (Using figure 16, Hillebrand et al. states," A "Toggle Simulation" button 1604 may allow the operator and/or user to switch between displaying the original digital image 518 and displaying the improved or worsened digital image (col. 12, lines 34-38)."); and

(vi) optionally repeating steps (iv) and (v) till the consumer has chosen an optimal transformation. See figure 15. Note that the starting point, "simulate and display improvement" has a depth of improvement as does ending point 1506. Step 1506 indicates a repetition of steps. Also a slider bar (fig. 16, num. 1602) is provided that displays an improved image or a worse image depending on the direction of the sliding bar; therefore the image is transformed which each slide of the bar at col. 12, lines 29-34.

Regarding claim 2, Hillebrand et al. discloses a method according to claim 1 wherein the body feature being transformed is that of lines and wrinkles (figure 5, num 510). Hillebrand et al. uses wrinkles and/or fine lines as a defect type to be located at col. 8, lines 4-6.

Regarding claim 3, Hillebrand et al. discloses a method according to claim 1 wherein the body feature transformed is that of color. Hillebrand et al. states, "Each of the improved (or worsened) areas is created by electronically altering the color of a plurality of pixels in one of the plurality of defect areas located in the first digital image of the face of the person (col. 2, lines 27-30)."

Regarding claim 4, Hillebrand et al. discloses the method according to claim 1 wherein the body feature is that of skin pores (fig. 5, num. 512: "Pores").

Claim 5, contains elements that are similar and addressed to claims 1-3 above except for the additional elements of:

- (i) gathering information from the consumer (A person's age, geographic location and ethnic origin are entered in text boxes at Hillebrand et al.: col. 5, lines 46-59) concerning the consumer's cosmetic needs (Using figure 5, a consumer can select check boxes for each skin attribute to analyze at col. 6, lines 1-4) in treating a body feature (Figure 5: texture 508, wrinkles 510, pores 512 and spots 514 as shown in figure 5);
- (ii) requiring the consumer to select between transformed and displayed images (A "Toggle Simulation" button must be used in order to select between an original image of a person or a transformed image of the person at col. 12, lines 35-38).

Regarding claim 6, Hillebrand et al. discloses a kit for displaying a consumer's skin image and transforming the image into consumer-defined composite attributes, the kit comprising:

- (a) a camera (fig. 1, num. 120) for obtaining an image (fig. 5, num. 518) of the consumer's skin (A consumer's face at Hillebrand et al. at col. 4, lines 60-62) ;
- (b) a screen (fig. 1, num. 108) for receiving and displaying the image;
- (c) a memory program (fig. 2, num. 204: "program memory 204 that implements all...of the method described below...(col. 4, lines 13-15).") for transforming (fig. 5, num. 516: "Simulation") the displayed image in a manner reflecting an effect achievable by application over a period of time (A consumer would have subsequent sessions using data from a previous session at col. 5, lines 47-50 and col. 11, lines 40-43 or a consumer's age is used as a limit with a population's age average at col. 5, lines 51-54) of a cosmetic product (A product is used to show a consumer the results of using and not using a product at Hillebrand et al., col. 11, lines 47-57) and for displaying the transformed image in close relationship to the non-transformed image (A toggle switch is used to display the non-transformed and transformed images at col. 12, lines 35-38).

Claim 7 is similar to and addressed in claim 1 above except for the elements of:

(iv) capturing a further image of the body feature at a later time ("subsequent visits" at Hillebrand et al., col. 11, line 42) after the product has been applied by the consumer (Hillebrand states that a consumer can be identified by a person's name that was saved during the subsequent visit at col. 11, lines 41,42). Therefore a consumer is returning for another analysis from a recommended treatment by an operator at col. 11, lines 50,51);

(vi) optionally digitally transforming the captured image of step (ii) in conformance with a predicted affect of the cosmetic product and displaying the digitally transformed image (This portion of claim 7 was addressed in claim 1 above) thereby allowing comparison (Implicitly, a comparison between a saved image from a previous visit by a consumer as discussed in claim 7(iv) above and another image obtained from step (ii) of claim 1 is performed by using a toggle button at col. 12, line 35) to the later time captured image representing an actual cosmetic product treated body feature as obtained from step (iv).

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Utsugi (US Patent 6,502,583 B1) is pertinent as teaching a method of transforming a person's face with a model until a desired image is achieved at col. 8, lines 23-36.



Lawton et al. (US Patent 5,990,901 A) is pertinent as teaching a method of morphing with editing features such as makeup at col. 10, lines 1,2.

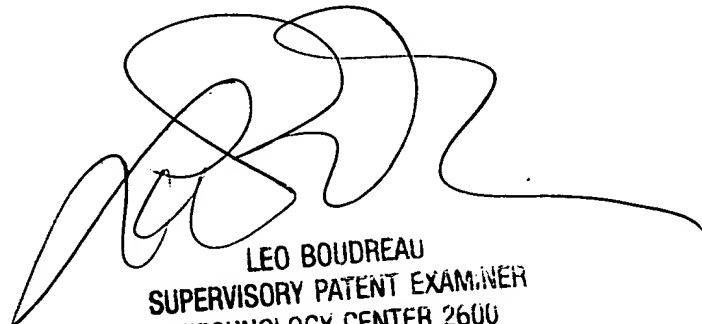
Ogiwara et al. (JP 11-143352) is pertinent as teaching a method of morphing makeup.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Rosario-Vasquez whose telephone number is 703-305-5431. The examiner can normally be reached on 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Boudreau can be reached on 703-305-4706. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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